

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal from the
Notice and Seizure and Intent to Forfeit
Firearm, Notice No. CF 364801

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

A hearing by conference telephone call took place on February 3, 2005, before Administrative Law Judge Allan W. Klein.

Appearing on behalf of the Department of Natural Resources was Assistant Morrison County Attorney Kyra L. Ladd, 213 SE First Avenue, Little Falls, MN 56345-3196. Appearing as a witness was Minnesota Conservation Officer Paul Kuske.

Appearing on his own behalf was Brent William Kruse, 150 Highway 10 North, Lot 202, St. Cloud, MN 56304. Appearing as a witness was his fiancée, Donna VanLith.

The record closed on February 3, 2005, at the close of the hearing.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Natural Resources will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. Under Minnesota law, the Commissioner may not make his final decision until after the parties have had access to this report for at least five days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file exceptions and present argument to him. The parties should contact the office of Gene Merriam, Commissioner, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155, to find out how to file exceptions or present argument.

STATEMENT OF ISSUE

1. Whether Mr. Kruse was a convicted felon; and
2. Whether the fact that he was not the owner of the firearm is a defense to forfeiture.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 14, 2003, Conservation Officer Paul Kuske received a complaint that a convicted felon, Brent Kruse, was hunting with a firearm. The next day, November 15, 2003, Kruse went to the location specified by the Complainant, and observed an individual, later identified as Kruse, walk out of the woods with a rifle and place the rifle in a case, which was then placed in the box of a truck. Kuske confronted Kruse, checked his hunting license, and then attempted to verify his conviction status by radio. Kuske was told that Kruse was, in fact, a convicted felon. Kuske asked Kruse about this, and Kruse stated that his probation officer from Stearns County, one Stan Brown, had told him that he could have a rifle, but not a handgun. Kruse then sought advice from the Morrison County Attorney's office, and was advised to seize the rifle and let the County Attorney sort it out. Kuske did seize the rifle.

2. In July of 2004, a court trial was held in Morrison County District Court on charges that Kruse was a felon in possession of a firearm. In September of 2004, the Hon. Thomas A. Godzala issued an Order of Conviction and Sentencing Order, wherein Kruse was found guilty of violating Minn. Stat. § 624.713, subd. 1(j)(1). Shortly thereafter, Kruse's attorney filed an appeal of the conviction with the Minnesota Court of Appeals. One of the claims in the appeal is that Kruse is not a convicted felon. Following some procedural matters, the Court of Appeals took jurisdiction of the case on January 21, 2005, and a decision will be forthcoming in several months.

3. The firearm in question, a Ruger Model M77, 7mm magnum rifle, was purchased by Kruse's fiancée, Donna M. VanLith. Both she and Kruse consider it to be owned by her. She agreed that he could use the rifle for deer hunting. The question of whether or not her ownership would affect the validity of the seizure, and how she might obtain the return of the rifle, was the main reason for the appeal of the seizure.

4. Conservation Officer Koske issued the Notice of Seizure and Intent to Forfeit Firearm, DNR No. CF 364801 on September 28, 2004. On November 12, 2004, attorney David W. Buchin, who had represented Kruse in the District Court proceeding, filed a request for review of the forfeiture proceeding, indicating "the basis for this request is that Mr. Kruse is not the owner of the weapon sought to be forfeited."

5. On December 17, 2004, the Department of Natural Resources requested an ALJ be assigned, and on December 28, 2004, Chief Administrative Law Judge Raymond R. Krause issued a Notice of and Order for Hearing, setting the hearing for February 3, 2005 in Minneapolis. Both parties agreed to conduct the hearing by telephone conference call, and it did proceed on February 3.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minn. Stat. § § 14.50 and 116.072, subd. 6, gives the ALJ and the Commissioner authority to conduct this proceeding, to consider the issues raised here, and to make Findings, Conclusions, and Recommendations and Orders, as appropriate.

2. The Department gave proper and timely notice of the hearing, and it has fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Minn. Stat. § 97A.223, subd. 1(a)(1) requires an enforcement officer to seize firearms possessed in violation of State or Federal law or court order.

4. The order of conviction entered by the Morrison County District Court in September of 2004 is conclusive proof that Kruse was a felon in possession of a firearm in violation of Minn. Stat. § 624.713. That judgment of conviction may not be collaterally attacked through this forfeiture review proceeding. However, if it is reversed by the Court of Appeals or the Supreme Court, then the grounds for such a reversal must be examined to determine whether or not the seizure and forfeiture was appropriate.

5. Even though the rifle was owned by Donna VanLith and only on loan to Mr. Kruse, that is not a bar to the seizure and forfeiture.

6. The bases and reasons for these conclusions are those expressed in the Memorandum that follows, and the ALJ incorporates that Memorandum into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner withhold making a decision on the validity of the seizure and forfeiture until the appeals of the Morrison County District Court proceeding are resolved.

Dated this 9th day of February 2005.

S/ Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

Reported: Tape Recorded
No Transcript Prepared

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The primary reason that Brent Kruse appealed this seizure and forfeiture is that he was not the owner of the rifle. It was actually owned by his fiancée, Donna VanLith, who had only loaned it to him to use for deer hunting. If that were the only unresolved question, the Administrative Law Judge would recommend that the seizure and forfeiture be affirmed (because ownership doesn't matter), and that would be the end of it.

However, that is not the only open question at this point. Mr. Kruse has been convicted of being a felon in possession of a firearm. He has appealed that conviction on a number of grounds, one of which is that he is the victim of a clerical mistake and is not a felon who cannot possess a firearm. The Administrative Law Judge believes that it is appropriate to wait until that question is resolved by the Court of Appeals (and the Supreme Court if it goes that far) before recommending that the Commissioner dispose of the rifle. Ms. Ladd stated that the rifle was an exhibit in the Morrison County District Court criminal trial, and that it will remain as an exhibit until the times for appeal have been exhausted. That should achieve the same end sought by the Administrative Law Judge. But to avoid any confusion between the District Court conviction which is now under appeal and this administrative proceeding to review the seizure and forfeiture, the Administrative Law Judge recommends that the Commissioner not make any final decision in this administrative proceeding until the appeal is resolved. Both parties understand that this could take several months, or longer, before it is resolved with finality.

Ownership

Conservation Officer Kuske relied upon the law that requires a law enforcement officer to seize a firearm possessed in violation of State or federal law or court order. That law, Minn. Stat. § 97A.223, subd. 1(a)(1), makes no provision for an "innocent owner" to claim that they (the owner) didn't know their firearm had been taken by a person who was not supposed to possess it. There are some situations (§ 97A.221) where there is an "innocent owner" defense, but this is not one of them. Moreover, Ms. VanLith knew that Mr. Kruse would be using the rifle.

The long and short of the matter is that ownership is not a defense to forfeiture when a firearm is possessed by a felon in violation of §624.713.

A.W.K.